

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M&I EQUIPMENT FINANCE COMPANY,

Plaintiff,

Civil Action No.:
08-CV-02164 (GEL/GWG)

v.

SIGNATURE BANK,

Defendant.

**PLAINTIFF'S LOCAL RULE 56.1(a) STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

(Electronically filed)

Plaintiff M&I Equipment Finance Company ("M&I"), in support of its cross-motion for summary judgment, contends there is no genuine issue to be tried as to the following material facts:

1. M&I obtained a judgment against Moise Banayan, Ahava Food Corp. ("Ahava") and Lewis County Dairy Corp. ("LCD") (collectively, "the Judgment Debtors"), in the amount of \$658,994.02, on January 12, 2007. Declaration of Louis Orbach, executed on July 14, 2008 ("Orbach Decl."), ¶ 2; Defendant's Local Rule 56.1 Statement of Material Facts (Docket No. 15) ("Defendant's Statement of Material Facts"), ¶ 9.

2. To date, the entire amount of that judgment remains unsatisfied. Orbach Decl., ¶ 2.

3. Defendant Signature Bank (“Signature”) received M&I’s first restraining notice, in the amount of \$658,994.02, via certified mail, return receipt requested, on March 5, 2007. Orbach Decl., ¶¶ 3-4; Declaration of Robert Bloch (Docket No. 14) (“Bloch Decl.”), ¶ 23.

4. M&I obtained a second judgment against the Judgment Debtors, in the amount of \$60,553.66, on April 23, 2007. Orbach Decl., ¶ 11; Defendant’s Statement of Material Facts, ¶ 23.

5. To date, the entire amount of that judgment remains unsatisfied. Orbach Decl., ¶ 11.

6. Signature received M&I’s second restraining notice, in the additional amount of \$60,533.66, via certified mail, return receipt requested, on May 14, 2007. Orbach Decl., ¶¶ 12-13; Defendant’s Statement of Material Facts, ¶ 24.

7. Signature failed to honor M&I’s restraining notices from March 5, 2007 to at least May 23, 2007 (the “Unrestrained Period”). Bloch Decl., ¶¶ 23, 26; Defendant’s Statement of Material Facts, ¶ 22.

8. From the time Signature received M&I’s first restraining notice on March 5, 2007 through May 13, 2007, Signature paid over, transferred or suffered the transfer of more than \$658,994.02 from the Judgment Debtors’ accounts. Bloch Decl., Ex. P.

9. From the time Signature received M&I’s second restraining notice on May 14, 2007 through May 23, 2007, Signature paid over, transferred or suffered the transfer of more than \$60,553.66 from the Judgment Debtors’ accounts. Bloch Decl., Ex. P.

10. At no time during the Unrestrained Period did the Judgment Debtors' accounts at Signature contain twice the amount of M&I's judgments. Bloch Decl., Ex. P.

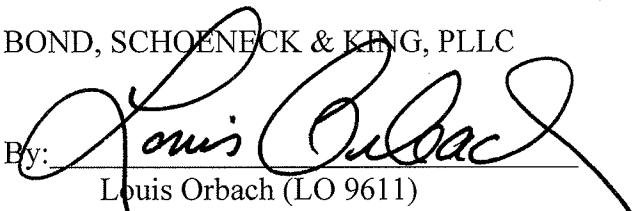
Dated: July 14, 2008

BOND, SCHOENECK & KING, PLLC

By:

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2008, I electronically filed the foregoing Plaintiff's Local Rule 56.1(a) Statement of Undisputed Material Facts in Support of Plaintiff's Cross-Motion for Summary Judgment with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

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Louis Orbach